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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:

Supreme Court No. R-22-0022

**PETITION TO AMEND RULE 42
(ER 1.5), ARIZ. R. SUP. CT.**

**Comment Opposing Petition
to Amend Rule 42 (ER 1.5),
Ariz. R. Sup. Ct.**

The Arizona Supreme Court should reject proposed ER 1.5(f) for three main reasons: (1) The rule is unnecessary; (2) It is contrary to the intent of the Arizona Supreme Court when it changed the rules last year to allow referral fees for non-lawyers; and (3) The rule would actually harm some clients and be a barrier to legal representation.

The Petition To Amend Rule 42 (ER 1.5) argues that the rule change is needed because lawyers might unethically raise their fees to compensate for the fee-sharing arrangement, and that contingency fee lawyers might be unduly influenced by the fee-sharing arrangement when giving clients advice on whether to accept/reject settlement offers. The Petition states that proposed ER 1.5(f) would reduce this risk: “A client who knows that her legal fee will be divided with someone outside the firm will be better equipped to evaluate settlement offers and

1 the overall reasonableness of the lawyer's fees. Requiring client notice and consent
2 strikes an appropriate balance between the client's interests and the lawyer's
3 [interests]." Unfortunately, this sounds like a lot of fluff and is devoid of any real
4 substance.

5 Arizona's sweeping ethical rule changes were enacted almost a year and a
6 half ago, yet the Petition conspicuously neglects to mention any of these
7 hypothetical examples occurring. There is no mention of client complaints,
8 attorney complaints, bar complaints, lawsuits, or any other evidence in support of
9 the new rule. Even assuming one of these hypothetical problems did occur, the
10 Petition fails to address how the disclosure of the fee sharing arrangement would
11 mitigate the speculative harm. Counsel undersigned is perplexed as to how a
12 client's knowledge of a lawyer's fee sharing arrangement with a non-lawyer would
13 help with a "client's lack of specialized legal knowledge and inability to monitor
14 the lawyers' activities." Again, more fluff.

15 Our Ethical Rules should not be changed absent a compelling reason for
16 doing so. This general rule of thumb is even more important when considering the
17 creation of a brand-new ethical rule. And especially a brand-new ethical rule that
18 is the first of its kind in the United States and is in uncharted waters. Absent a
19 compelling reason, there is the real risk that a new rule could open up a can of
20 worms and cause significant unintended consequences. That is exactly the case
here, as ER 1.5(f) would harm some clients and be a barrier to legal representation.

21 Counsel undersigned represents a number of Arizona clients in various mass
22 tort cases and associates with trial attorneys who are leading the Plaintiffs'
Steering Committees in the various Multi-District Litigations throughout the
country. Almost all of these attorneys are out-of-state. The problem with ER 1.5(f)

1 is that it would preclude counsel undersigned from associating with these top-notch
2 trial attorneys (and hence maximizing the clients' recoveries) because their states'
3 ethical rules specifically forbid the payment of attorneys' fees to non-lawyers. No
4 ethical non-Arizona attorney would sign a contingency fee contract in which a
portion of the fee was to be paid to a non-lawyer.

5 The bottom line is that the adoption of and compliance with ER 1.5(f) would
6 preclude Arizona lawyers from associating with non-Arizona lawyers in
7 contingency fee cases (at least in cases involving referral fees to non-lawyers).
8 Needless to say, this barrier to full legal representation would cause substantial
9 harm to Arizona negligence victims. Maximizing a client's financial recovery is
10 much more important than requiring the disclosure of completely unnecessary and
11 irrelevant information about the ABC Marketing Company receiving XX% of the
fee.

12 Arizona has long been at the national forefront of finding new and
13 innovative ways to deliver legal services to consumers -- especially those of lower
14 socio-economic backgrounds. Unfortunately, proposed ER 1.5(f) is a step in the
15 wrong direction. Not only would it diminish the ability of Arizona lawyers to
16 pursue new and innovative business opportunities envisioned by the LSTF Report
17 and the Arizona Supreme Court, it would actually harm consumers based upon the
reasons I mentioned -- as well as other possible reasons not yet anticipated or
realized.

18 Based upon the foregoing, counsel undersigned respectfully urges the Court
19 to reject the Petition to Amend Rule 42 (ER 1.5), Ariz. R. Sup. Ct.
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1 RESPECTFULLY SUBMITTED this 2nd day of May, 2022.

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Robert W. Goldwater III, Esq.